

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Appeal No. 421 of 2004

Date of decision: 30.8. 2007.

Madan Singh.		Appellant
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	-VS-	
State of Himachal Pradesh		Respondent

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹? No.

For the appellant : Mr. G. R. Palsra, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional
Advocate General with Mr D.S.Nainta,
Deputy Advocate General.

Surjit Singh, J. (oral)

Heard and gone through the record.

The appellant has been convicted of offence under Section 20 of the Narcotic Drugs and Psychotropic Substance Act, hereinafter called the 'Act', and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of rupees one lac, in default of payment of fine, to undergo simple imprisonment for six months.

The prosecution case is that on 5.1.2003, when ASI Neel Chand (PW14) along with Constable Moti Ram (PW2), Constable Kuldip Singh (PW11) and three other constables named Hem Raj, Narpal Ram and Thakur Singh, was present at a place called "Bindrabani", a bus bearing registration No. HP-33-9044 came from Kullu side. The bus was got stopped for checking the persons and

Whether reporters of the Local papers are allowed to see the judgment?

the luggage of the passengers. During the course of checking, ASI Neel Chand (PW14) suspected that the appellant was carrying some narcotic drug or psychotropic substance. He informed the appellant about his suspicion and told him that his person was intended to be searched and in case he so desired, search could be arranged in the presence of a Magistrate or a Gazetted Officer. A memo to this effect was prepared. Appellant opted for being searched at the spot by ASI Neel Chand. Search was there after conducted. Appellant was found to be wearing a belt with small pockets and over that belt, he had worn a jacket. From the pockets of that belt, charas in the form of fingers and chapattis was recovered. Appellant was also found wearing a knee cap on his right leg and inside that knee cap also some charas was there. The charas recovered from the jacket and knee cap was mixed up and weighed. Total weight was found to be of 1 Kg 600 grams. Two representative samples, each weighing 25 grams, were taken. Samples and the bulk charas were made into separate parcels. Signatures of the appellant were obtained on cloth coverings of all the three parcels, besides the signatures of the witnesses. Neel Chand also put his signatures on those coverings. One of the two samples was sent to the Chemical Examiner who reported that the sample had resin to the extent of 30.24% and thus, it contained contents of charas.

On the conclusion of the trial, the Court found the appellant guilty of being in possession of 1 Kg 600 grams charas.

The main submission made on behalf of the appellant by the learned counsel is that the case property that was produced in the Court was different from the stuff allegedly recovered from the appellant and if it is so, the appellant does not stand connected with

the recovered stuff. He has drawn our attention to the testimony of Neel Chand (PW14) and Moti Ram Constable (PW2) both of whom have stated in no uncertain terms that the signatures of the appellant had been obtained on the cloth coverings of parcel Ext. P5 containing bulk charas and two sample parcels, including parcel Ext. P9 produced in the Court. However, both of them admitted that the covering of parcel Ext. P9 did not have the signatures of the appellant on it meaning thereby that the parcel on which the signature of the appellant had been obtained on the spot, was not produced in the Court and the parcel produced was different from that made on the spot. Moti Ram constable (PW2) who was examined on 22.6.2004 stated that even the covering of the parcel Ext. P5 containing the bulk charas did not bear the signature of the accused. Neel Chand (PW14) who was examined on 2.8.2004 initially stated that he had not obtained the signature of the appellant on Ext. P5 but then he changed his statement and testified that signature of the appellant had been obtained and it was there on the covering of parcel Ext. P5. The possibility of the signatures of the appellant having been forged on the cover of this parcel Ext. P5 during trial cannot be ruled out, particularly when on 22.6.2004 the date on which Moti Ram (PW2) was examined, the said parcel, per testimony of PW2 Moti Ram, did not bear the signature of the appellant. A specific suggestion was put to Neel Chand (PW14) that signature of the appellant had been forged on the parcel. No doubt, he denied the suggestion, but in view of the above discussed position, viz, on 22.6.2004, the signature of the appellant was not there on the covering of the parcel, it is quite likely that the signature of the appellant was forged after PW2 was examined and before Neel Chand (PW14) entered the witness box.

Likelihood of the contents of the sample that was analyzed by the Chemical Examiner having been tampered with can also not be ruled out in view of what has been stated herein above and the fact that Mohinder Singh (PW1) to whom the seal had allegedly been entrusted after occurrence has denied that it was handed over to him, meaning thereby that the seal remained with Neel Chand (PW14) and he had the opportunity of tampering with the contents of the sample.

In view of above said position, we are of the view that the case of the prosecution does not stand proved beyond reasonable doubt. Hence the appeal is accepted. Judgment of the trial Court convicting and sentencing the appellant, as aforesaid, is set aside and the appellant is acquitted. He being in jail, serving out the sentence, is ordered to be released immediately, in case his detention is not required in any other case.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

August 30, 2007.
(bm)

